

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.6229 of 2015

Arising Out of PS.Case No. -76 Year- 2014 Thana -KARJA District- MUZAFFARPUR

- =====
1. Lalbabu Sah Son of Sagru Sah
 2. Satan Sah Son of Sagru Sah
 3. Ram Chandra Sah Son of Sagru Sah
 4. Ravi Sah Son of Satan Sah
 5. Monka Devi Wife of Lalbabu Sah All are resident of village -
Barkagaow, P.S. Karza, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Ranjan

For the Opposite Party/s : Mr. Ambika Bhagat(Spl. P.P.)

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

4 04-03-2015

The record is put up for passing the order.

2. I have already heard the parties.

3. Petitioners apprehend their arrest in connection with Karza P.S. Case No. 76 of 2014 registered under section 341,323,504 and 506/34 of the Indian Penal Code and Section 3(i)(x) of the SC/ST Prevention of Atrocities Act.

4. The accusation against the petitioners is that they abused the informant uttering her caste name and also assaulted her with lathi and Danda and furthermore, they snatched gold chain belonging to the informant.

5. Learned counsel appearing for the petitioners



submits that in course of investigation, notice under section 41A of the Criminal Procedure Code was issued to the petitioners and in pursuance thereof, they appeared before investigating officer and after taking the statements of the petitioners in their defence, the investigating officer compelled the petitioners to execute bonds. On being persuaded by the investigating Officer, petitioners executed bonds and, thereafter, they were released. Learned counsel appearing for the petitioners further submits that petitioners were neither arrested nor taken into custody and, therefore, present anticipatory bail application is maintainable.

6. His next contention is that no case under the provision of SC/ST Prevention of Atrocities Act is made out and, hence, the present petition is not hit by Section 18 of the SC/ST Prevention of Atrocities Act. His next contention is that no specific overt act has been attributed against these petitioners and except the offence of SC/ST Prevention of Atrocities Act, almost all the sections areailable in nature but since the charge sheet has been submitted for the offences punishable under SC/ST Prevention of Atrocities Act as well as Indian Penal Code, petitioners apprehend their arrest. His next contention is that even if it is assumed that petitioners were arrested in connection with the above stated case, then, also, admittedly, they were released by



the police after execution of bonds and therefore, petitioners cannot again be taken into custody in view of the decision rendered by this Court in the case of **Mahendra Prasad Singh vs. State of Bihar** reported in **2004 (3) PLJR 491**. Learned counsel for the petitioners also relied upon decisions reported in **AIR 2014 SC (Criminal) 1083** as well as **2014 (3) PLJR (SC) 314**.

7. On the other hand, learned Additional Public Prosecutor refuted the above stated submissions arguing that admittedly, petitioners were taken into custody by the investigating officer in course of investigation, though, later on, petitioners were released on police bail after execution of bonds and, therefore, this anticipatory bail petition is not maintainable. Learned Additional Public Prosecutor further submits that the present application is hit by section 18 of SC/ST Prevention of Atrocities Act which prohibits to entertain petition filed under section 438 of the Criminal procedure Code in cases registered under the provisions of SC/ST Prevention of Atrocities Act.

8. It is an admitted position that in course of investigation, police issued notice to petitioners under section 41A of the Criminal Procedure Code and in pursuance of the aforesaid notice, petitioners appeared before the investigating officer but subsequently, the investigating officer released them on execution

of bonds. Here, I would like to refer section 41A of the Criminal Procedure Code which runs as follows.

41A. Notice of appearance before police officer; - (1) The police officer may, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice. (3) where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.(4) Where such person, at any time falls to comply with the terms of the notice, it shall be lawful for the police officer to arrest him

for the offence mentioned in the notice, subject to such orders as may have been passed in this behalf by a competent Court.

9. From perusal of the aforesaid provision, it is obvious that if a person complies the direction of the investigating officer, the said person shall not be arrested in respect of the offence referred into the notice but if police officer is of the opinion that he ought to be arrested, the police officer may arrest the aforesaid person. However, before making the aforesaid arrest, the police officer is duty bound to record reasons for making the aforesaid arrest. In the instant case, admittedly, the investigating officer did not record any reason or his satisfaction for making the arrest of the petitioners but in spite of that petitioners were directed to execute bonds. Therefore, it is apparent on the face of record that the investigating officer did not comply with the provision of section 41A of the Criminal Procedure Code in its true sense. However, the vires of arrest has not been challenged by the petitioners in this petition and the only question before this court is as to whether petitioners were arrested and taken into custody or not. Admittedly, the petitioners were released after execution of bail bonds and therefore, it is obvious that they were taken into custody.

10. In view of the aforesaid discussions as well as material available on the record, in my view, the petitioners were in custody in course of investigation of the case and it is well settled principle that if a person is taken into custody, his petition filed under section 438 of the Cr.P.C is not maintainable.

11. In **Mahendra Prasad Singh Case**, (Supra) a co-ordinate Bench of this Court has held at Para-4 of the order as follows:-

“On considering the relevant provision in the Code of Criminal Procedures, this Court is of the opinion that had the FIR been only for bailable offences and had the petitioner been granted benefit of bail by the police for bailable offences only under the provisions of Section 436 of the Cr.P.C, the matter could have stood on different footing. On account of offence being treated as non bailable at the later stage due to subsequent developments, may be an application for anticipatory bail could have been found maintainable. However, in the present case which is falling for consideration this Court is of the view that since the case was initially for non bailable offences wherein the petitioner was taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the same case cannot be held to be maintainable”.

12. From bare perusal of aforesaid observation of coordinate Bench of this Court, it is obvious that if an accused of non bailable offences is taken into custody and subsequently, released on bail by the police, his application for anticipatory bail on the ground that he has an apprehension of arrest in the same case is not maintainable.

13. Admittedly, in the present case the first information report was lodged for the offences of SC/ST (Prevention of Atrocities) Act which is non bailable in nature and subsequently, the police submitted charge sheet for the above stated offence. It is also an admitted position that before submission of the charge sheet, petitioners were released by the police after execution of bonds and, therefore, I am of the view, that this anticipatory bail petition is not maintainable and liable to be dismissed being not maintainable.

14. Accordingly, this petition stands disposed of with this observation that if petitioners appear before the court of Smt. Rashmi learned Judicial Magistrate, 1st class, Muzaffarpur/ concerned court in connection with Karza P.S. Case No. 76 of 2014 within six weeks from today, the concerned court shall consider their prayer for bail in accordance with law keeping in view the well established principle that a person who is already

on bail shall not be denied such privilege unless there is any
allegation of misuse etc.

(Hemant Kumar Srivastava, J)

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